

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RALPH W. BAXTER, JR.

Appeal 2006-3052
Application 10/765,959
Technology Center 3600

Decided: November 14, 2007

Before WILLIAM F. PATE III, TERRY J. OWENS, and
JENNIFER D. BAHR, Administrative *Patent Judges*.

WILLIAM F. PATE III, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF CASE

This is an appeal from the final rejection of Claims 1, 4-11, 13-20 and 23. These are the only claims remaining in the application.

We have jurisdiction over the appeal pursuant to 35 U.S.C. §§ 6 and 134.

The claimed invention is directed to a torque transmitting apparatus used in automotive vehicles. The torque transmitting apparatus includes a hydraulic actuator for operating a friction clutch in the torque transmitting apparatus. The hydraulic clutch is operated by an actuator including a hydraulic pump inside the torque transmitting apparatus.

Claim 1, reproduced below, is further illustrative of the claimed subject matter.

1. A torque transmitting apparatus comprising:
 - a differential assembly including a differential case and at least one output shaft;
 - a housing rotatably supporting said differential assembly;
 - a drive pinion provided for rotating said differential assembly;
 - at least one friction clutch assembly for selectively engaging and disengaging said differential case and said at least one output shaft; and
 - a hydraulic clutch actuator for selectively operating said at least one friction clutch assembly between a disengaged condition and an engaged condition;
 - said hydraulic clutch actuator including a hydraulic pump providing a hydraulic fluid under pressure and a hydraulic pressure accumulator selectively communicating with said hydraulic pump for charging said hydraulic pressure accumulator with said hydraulic fluid under pressure;
 - said hydraulic pump is mounted within said housing about a pinion shaft of said drive pinion;
 - said hydraulic pressure accumulator mounted to said housing and selectively communicating with said at least one friction clutch assembly for selectively engaging said at least one clutch assembly.

REFERENCE

The reference of record relied upon by the examiner as evidence of lack of novelty is:

Porter 6,578,654 B2¹ Jun. 17, 2003

REJECTION

Claims 1, 4-11, 13-20 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Porter.

ISSUE

The sole issue on appeal is whether the claimed subject matter lacks novelty over the disclosure of Porter.

OPINION

Appellant's argument is that the claimed subject matter does not lack novelty over Porter because Porter does not disclose a "differential" as the term is used in the mechanical art. See Appeal Brief at page 6. According to Appellant, the term "differential" is restricted to a device with one input shaft and two output shafts where rotation of the outputs at different speeds from one another is likely to occur, in, for example, the common rear differential in most automotive vehicles.

Therefore, we are called upon to construe the claim term "differential." It is apparent that the Examiner is construing the claim term

¹ This Patent No. was incorrectly listed in the Answer under the "Evidence Relied Upon" section as 5,578,654. The § 102(b) rejection is actually based on the Porter Published Application, 2002/0144851 A1, published Oct. 10, 2002.

“differential” as directed to a device that transmits torque but allows different rotational speeds between the input and the output. As an example of such a device, the examiner has cited Porter which, according to the Examiner, is an example of a center differential placed between the front and rear differentials in a four wheel drive vehicle. When construing claim terminology in the Patent and Trademark Office, this Board is required to give the claim language its broadest reasonable interpretation. *See In re Crish* 393 F.3d, 1253, 1256 (Fed. Cir. 2004); *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004). *In re Hyatt*, 211 F.3d 1367, 1372-73 (Fed. Cir. 2003).

We note Appellant’s reliance on extrinsic evidence in the form of a dictionary definition of the claim term “differential.” In order to evaluate the Examiner’s allegation that a device like that of Porter is a center differential, we have also consulted extrinsic evidence. We have found that the device disclosed in Porter is often referred to in the art as a “center differential”, and we fully credit the Examiner’s argument that one of ordinary skill in this art would comprehend Porter as such a device.² Accordingly, it is our claim construction conclusion of law that the Examiner’s claim construction that at least one kind of differential is a center differential in which torque is transmitted but the input is allowed to turn at a different rate than the output is included in the broadest reasonable

² See definition of “center differential” in the following reference works: John Dinkle, *Road & Track Illustrated Automotive Dictionary*, pages unnumbered, (2000); Keith Lane, *Automotive A-Z: Lane’s Complete Dictionary of Automotive Terms*, pg. 58, Dorchester, England, (2002). (Copies enclosed.)

construction for the claim term “differential.” When construed in this light, it is our finding that Porter anticipates all claims on appeal.

As an additional aside, we must point out that Appellant’s argument that a differential must include two outputs allowed to turn at different rates is undercut by Appellant’s independent claims on appeal which are directed to a differential case “with at least one output shaft.” Appellant’s claims are not commensurate in scope with Appellant’s claim construction argument. At oral hearing, Appellant’s counsel could not account for this discrepancy.

CONCLUSION AND ORDER

Inasmuch as Appellant has not argued any specific claim on appeal separate from any other, we have grouped all of the claims with claim 1. 37 C.F.R. § 41.37(c)(1)(vii) (2007). We have found that claim 1 lacks novelty over the disclosure of Porter. Therefore the rejection of all of the claims on appeal is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a) (1) (iv).

AFFIRMED

vsh

Appeal 2006-3052
Application 10/756,959

LINIAK, BERENATO & WHITE
STE. 240
6550 ROCK SPRING DRIVE
BETHESDA MD 20817